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March 20, 2012

BY ECF

Hon. John Gleeson  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Dominic Caramanica  
11 Cr 26 (JG)

Dear Judge Gleeson:

When we last appeared before the Court in connection with Mr. Caramanica's sentencing on February 17, Your Honor ordered a Fatico hearing "to resolve the dispute over the association aspect of the defendant's criminal history." See ECF Document 102. I have no recollection of Your Honor ordering a pre-hearing memorandum from the government on the issue. Regardless, the government has submitted a letter to Your Honor dated March 13, 2012, setting forth its evidence and arguments "in advance of the Fatico hearing."

The government has advised that it will rely upon the arguments and exhibits included within its March 13 letter at the Fatico hearing. I, therefore, feel compelled to respond to the government's March 13 letter in advance of the next court appearance.

Daniel Cilenti was Mr. Caramanica's blood relative, or uncle, on his mother's side of the family. Mr. Caramanica has never denied knowing or associating at times with his Uncle Danny. What Mr. Caramanica has denied, and the government has not come close to proving, is that Mr. Caramanica engaged in any prior criminal activity with Mr. Cilenti. Stripped to its essence, the government's March 13 letter does not allege that Mr. Caramanica has any prior criminal history, charged or uncharged, with Cilenti or anyone else.

The government initially argued to Your Honor in its February 14 letter that Mr. Caramanica was a "long time driver" for Mr. Cilenti. See ECF Document 98 at page 4. But, the government has now retreated from that position and simply characterized Mr. Caramanica as "a driver" for Cilenti in its March 13 letter.

I have reviewed the disc provided by the government containing video related to law enforcement surveillance at Umberto's Clam House on a single day - November 3, 2004. All that the Umberto's Clam House video shows is Mr. Caramanica entering and leaving the restaurant, in the community where he then lived, the Bronx, by himself. Danny Cilenti is nowhere to be seen on this video.<sup>1</sup> If Mr. Caramanica was, in truth, the "long time driver" for Cilenti, where is the law enforcement surveillance over the years to support this argument.

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<sup>1</sup> By a letter dated March 2, 2012, the government provided the defense with this disc and another disc containing video related to a law enforcement surveillance at Don Pepe's Restaurant on November 23, 2004, "in anticipation of the defendant's sentencing hearing." But, my careful review of the video revealed that Mr. Caramanica was not in it. So, the government has now, understandably, decided to not include this video as an exhibit at the hearing.

I have also reviewed the wiretap evidence provided to Your Honor by the government that was “part of a separate investigation” conducted in or about late 2004 and early 2005. Significantly, this separate investigation, including what Mr. Caramanica was overheard stating on the wiretap, including “Merry Christmas,” and that his uncle was his “guy,” did not result in any criminal charges ever being filed against Mr. Caramanica.

During that “separate investigation,” a proactive cooperating witness was also used by the government to make consensual recordings of others, including Daniel Cilenti. But, Mr. Caramanica was not present or mentioned during these conversations. And, upon information and belief, there were other cooperating witness also involved in that separate investigation conducted by the government which resulted in no criminal charges ever being brought against Mr. Caramanica.

Finally, in its February 14 letter, the government explained to Your Honor that “[t]he charges in this case stem from a long-term investigation involving a proactive cooperating witness (“CW”) who made consensual recordings of numerous organized crime members and associates over a period of close to four years.” See ECF Document 98 at page 2. The CW consensually recorded 829 separate conversations he had with others, including a number of conversations he had with Daniel Cilenti between the years 2006 and 2010. Mr. Caramanica was never present or mentioned during any of those conversations.

The single conversation where Mr. Caramanica was consensually recorded by the CW working for the government was on January 10, 2010, during the single meeting Mr. Caramanica had with the fellow who owed a legitimate debt to the CW here. And during that meeting, Mr. Caramanica - whom the government has previously conceded played a minimal role in the charged offense - did not utter a single word to the debtor about the repayment of the legitimate debt that he owed to the government's proactive CW. Finally, the government has also not provided Your Honor with any law enforcement surveillance from the long-term investigation conducted in this case of Mr. Caramanica in Daniel Cilenti's presence, let alone, driving him around between the years 2006 and 2010.

Aside from the statements of the prosecutor, who is not a competent witness, the government has not offered evidence from a single prior cooperating witness that Dominic Caramanica was the driver for and an associate in Daniel Cilenti's crew "for at least eight years," let alone, that he ever participated in any prior crime as a part of his crew.

In sum, the government cannot meet its burden here.

Respectfully yours,

/JRF/

James R. Froccaro, Jr.

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